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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EDWIN DIAZ, on behalf of himself and
all others similarly situated,

Plaintiffs,

v.

THE KROGER CO.,

Defendant.

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Case No. 1:18-cv-07953-KPF

NOTICE OF MOTION

PLEASE TAKE NOTICE that Defendant The Kroger Co. (“Kroger”), requests that this Court, pursuant to Fed. R. Civ. Pro. 12(b)(1) and 12(b)(2), dismiss this action for lack of subject matter jurisdiction and lack of personal jurisdiction. The alleged causes of action are now moot. Kroger is not subject to personal jurisdiction in this Court pursuant to New York’s long-arm statute. Further, the exercise of jurisdiction over Kroger would violate federal due process requirements.

A memorandum of law and affidavits of Andrew Whiting in support of this Motion are attached.

Dated: New City, New York
January 18, 2019

PEREZ & MORRIS LLC

By: /s/ Michael J. Glidden
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